



CIVIL SERVICE COMMISSION

COUNTY OF LOS ANGELES

COMMISSIONERS: DENNIS F. HERNANDEZ • NAOMI NIGHTINGALE • STEVEN AFRIAT • JOHN DONNER • Z. GREG KAHWAJIAN
LAWRENCE D. CROCKER, EXECUTIVE DIRECTOR • STEVE CHENG, HEAD CIVIL SERVICE COMMISSION

DATE: August 29, 2017

TO: All Interested Parties

FROM: Lawrence D. Crocker *LDC*
Executive Director

SUBJECT: Review of the Commission's Procedural Rules

Periodically, the Civil Service Commission ("Commission") undertakes a review of its Procedural Rules to determine whether any amendments are required to improve the efficiency of the appeals process. The Commission also welcomes suggestions/proposals from interested parties as to what rule(s) may need amending.

Currently, two Commissioners have discussed a proposal to amend Rule 5.01, pertaining to the selection and appointment of a hearing officer once the commission has granted a hearing. Attached is a copy of the proposal, which is being transmitted to the full commission. The Commission welcomes comments as to this proposal as it considers the matter.

At the Commission's regular agenda meeting on September 27, 2017, the Commission will begin initial discussions and comment on this proposed procedural change as well as any other proposals received. Recommendations and/or comments should be submitted in writing no later than September 15, 2017.

If you have any questions regarding this matter, please contact the Commission's staff at (213)-974-2411.

LDC:

Attachment

PROPOSED RULE

5.01. Selection and Appointment of Hearing Officer

Except for consolidated appeals, the procedure for the selection and appointment of a Hearing Officer shall be as follows:

(a) Within five (5) business days from the date the Commission grants or orders a hearing or hearing de novo and assigns the matter to a Hearing Officer, the Executive Director shall **randomly** select a Hearing Officer and **mail the name of said Hearing Officer** to each party or the party's representative of record.

(b) Each party shall have ten (10) business days from the date of mailing of such list to file with the Commission a written challenge **of the proposed Hearing Officer for cause only**. Any party filing a notice of challenge shall mail a copy of such notice to all other parties. **Any challenge "for cause" shall be in writing setting forth the specific facts and/or authorities to support such challenge and that challenge shall be heard and ruled upon by the Commission in accordance with this rule.**

(c) For purposes of this rule, the following shall be considered "cause" for the disqualification of the Hearing Officer:

(1) (A) The Hearing Officer has personal knowledge of disputed evidentiary facts concerning the proceeding.

(B) The Hearing Officer shall be deemed to have personal knowledge within the meaning of this paragraph if the Hearing Officer, or the spouse of the Hearing Officer, or a person within the third degree of relationship to either of them, or the spouse of such a person is to the Hearing Officer's knowledge likely to be a material witness in the proceeding.

(2) (A) The Hearing Officer served as a lawyer in the proceeding, or in any other proceeding involving the same issues he or she served as a lawyer for a party in the present proceeding or gave advice to a party in the present proceeding upon a matter involved in the action or proceeding.

(B) A Hearing Officer shall be deemed to have served as a lawyer in the proceeding if within the past two years:

(i) A party to the proceeding, or an officer, director, or trustee of a party, was a client of the Hearing Officer when the Hearing Officer was in the private practice of law or a client of a lawyer with whom the Hearing Officer was associated in the private practice of law.

(ii) A lawyer in the proceeding was associated in the private practice of law with the Hearing Officer.

(C) A Hearing Officer who served as a lawyer for, or officer of, a public agency that is a party to the proceeding shall be deemed to have

served as a lawyer in the proceeding if he or she personally advised or in any way represented the public agency concerning the factual or legal issues in the proceeding.

(3) (A) The Hearing Officer has a financial interest in the subject matter in a proceeding or in a party to the proceeding.

(B) The Hearing Officer shall be deemed to have a financial interest within the meaning of this paragraph if:

(i) A spouse or minor child living in the household has a financial interest.

(ii) The Hearing Officer or the spouse of the Hearing Officer is a fiduciary who has a financial interest.

(4) The Hearing Officer, or the spouse of the Hearing Officer, or a person within the third degree of relationship to either of them, or the spouse of such a person is a party to the proceeding.

(5) A lawyer or a spouse of a lawyer in the proceeding is the spouse, former spouse, child, sibling, or parent of the Hearing Officer or the judge's Hearing Officer or if such a person is associated in the private practice of law with a lawyer in the proceeding.

(6) (A) For any reason:

(i) The party presents objective evidence to show that recusal of the Hearing Officer would be in the interests of justice.

(ii) The party presents objective evidence to show there is a substantial doubt as to the Hearing Officer's capacity to be impartial.

(iii) Bias or prejudice toward a party, witness, lawyer, or advocate in the proceeding may be grounds for disqualification.

(B) If a Hearing Officer determines himself or herself to be disqualified, the Hearing Officer shall notify the Executive Director of his or her recusal and shall not further participate in the proceeding, unless his or her disqualification is waived by the parties. There shall be no waiver of disqualification if (a) the Hearing Officer has a personal bias or prejudice concerning a party, or (b) the Hearing Officer served as an attorney in the matter in controversy, or has been a material witness concerning that matter.

(7) By reason of permanent or temporary physical impairment, the Hearing Officer is unable to properly perceive the evidence or is unable to properly conduct the proceeding.

(8) It shall not be grounds for disqualification that the Hearing Officer is or is not a member of a racial, ethnic, religious, sexual or similar group and the proceeding involves a claim under Rule 25 of the Civil Service Rules.

(d) Any challenge for cause shall be determined by the Executive Director whose decision may be appealed to the Commission. The decision of the Executive Director shall be final unless there is a clear showing of an abuse of discretion.

(d) After expiration of the ten (10) business-day period prescribed in (b) above, if there are no challenges for cause, the Executive Director shall appoint the assigned Hearing Officer to hear the matter.

(e) Written notice of appointment of the Hearing Officer shall be given to all parties and to the Hearing Officer by the Executive Director.